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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

Plaintiff in Intervention,

v.

STATE OF NEW YORK,

Defendant.

MOTION OF THE STATE OF SOUTH CAROLINA FOR LEAVE TO INTERVENE AND ADOPT COMPLAINT AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AND ADOPT COMPLAINT

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Pursuant to Rule 9 of the Rules of the Supreme Court, the State of South Carolina, a sovereign state of the United States of America, by and through its Attorney General, T. Travis Medlock,

moves the Court for an order permitting it to intervene in the above-entitled cause, and permitting it to adopt, to the extent appropriate, the amended complaint in intervention heretofore filed by the State of Texas, Plaintiff in Intervention. In support of this motion, the State of South Carolina would show the Court as follows:

I.

1. On or about May 31, 1988, the Court granted the motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal

property, consisting of monies and other intangible property, described as "excess receipts" by the Plaintiff in Intervention State of Texas ("Texas") in its complaint in intervention and held or formerly held by securities brokerage houses incorporated in Delaware and demanded by or remitted to New York.

2. On December 12, 1988, Thomas H. Jackson, Esquire, was appointed Special Master in this case.

3. On February 21, 1989, the Court granted the motion of Texas to intervene and file its complaint in intervention in this case. Subsequently, the Court further granted the motion of Texas to file an amended complaint.

4. As set forth in its amended complaint, Texas claims the

right to custodial possession of the excess receipts that constitute the subject matter of the original controversy between Delaware and New York, specifically, that portion of excess receipts held or formerly held by securities brokerage houses incorporated in Delaware that are attributable to issuers incorporated in Texas.

5. Texas also claims the right to custodial possession of certain additional excess receipts, consisting of excess receipts attributable to issuers incorporated in Texas held or formerly held by the Depository Trust Company and additional excess receipts that have arisen in connection with distributions made by Texas municipal and other governmental issuers that are now being demanded by or remitted to New

York. It is the understanding of the State of South Carolina ("South Carolina") that the Court may consider claims to both the excess receipts originally at issue and the additional excess receipts identified by Texas.

6. Texas claims that, if the identity of the beneficial owner is unknown, the excess receipts and additional excess receipts should be remitted to the state of incorporation of the issuer under that state's unclaimed property law.

7. South Carolina claims a portion of the excess receipts and additional excess receipts at issue in this action, specifically, that portion of the excess receipts and additional receipts attributable to issuers incorporated in South Carolina and that

portion attributable to South Carolina counties, municipalities, and other governmental entities.

8. The amount of excess receipts and additional excess receipts that South Carolina is entitled to claim is currently unknown. South Carolina has never, prior to this lawsuit, had any reason to identify and quantify such excess receipts and additional excess receipts. However, it is probable that at least one issuer incorporated in South Carolina has generated excess receipts and additional excess receipts. Moreover, it is a virtual certainty that bonds issued by South Carolina counties, municipalities and other governmental entities have generated additional excess receipts subject to the claim of South Carolina.

9. South Carolina asserts its claim pursuant to Title 27, Chapter 18, Code of Laws of South Carolina which provides, in essence, for the custodial taking of tangible and intangible personal property that is held in the ordinary course of the holder's business and has remained unclaimed by the owner for a period of five years.

10. South Carolina supports and adopts, as if fully set forth in these pleadings, Texas' amended complaint in intervention and the factual and legal arguments set forth therein, to the extent the same are applicable and relevant to the claims of South Carolina set forth in Paragraphs 7-9 above.

11. Although South Carolina adopts the amended complaint in

intervention filed by Texas, it is essential that South Carolina be permitted to intervene in its own right in this proceeding. The decision of the Court will establish a rule of law that will conclusively determine the future right of South Carolina to take possession of unclaimed property similar or identical in nature to the property at issue herein. As a party, South Carolina can obtain a ruling from the Court recognizing its right to take possession of specific unclaimed property pursuant to its unclaimed property laws and ordering New York to tender such property to South Carolina.

12. In Litigation Management Order No. 1, dated as of October 18, 1989, the Special Master established a discovery schedule and a timetable for

the filing of Motions for Leave to Intervene by prospective intervenors. He stated that "[p]arties not meeting this timetable will be required, absent compelling reasons, to fit in to ongoing discovery and motions without disruption of that scheduling track."

13. In Discovery Order No. 5, dated March 16, 1990, the Special Master modified and extended the discovery schedule.

14. Intervention by South Carolina will not delay the progress of this case, since it is prepared to comply with the schedule specified in Litigation Management Order No. 1, as modified and extended by Discovery Order No. 5; and it agrees to "fit in to ongoing discovery and motions" without disruption of that schedule.

15. Based on the foregoing, South Carolina is entitled to intervene as a matter of right pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure. Alternatively, South Carolina urges the Court to exercise its discretion and grant the requested intervention pursuant to Rule 24(b).

16. The intervention of South Carolina in this action will not unduly delay these proceedings or prejudice the adjudication of the rights of the present parties. To the extent that it can do so, Texas has offered to coordinate the effort among those states wishing to intervene and represent themselves in this case. The addition of South Carolina as a plaintiff in intervention will not result, therefore, in an unmanageable increase in the

number of parties to this litigation.

II.

17. The Court, in Western Union Telegraph Company v. Pennsylvania, 368 U.S. 71 (1961), recognized the difficulties inherent in resolving controversies between different states over their respective rights to take possession of unclaimed intangible personal property, and concluded that the United States Supreme Court was the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." Id. at 79. See also, Pennsylvania v. New York, 407 U.S. 206 (1972). It is such an opportunity that South Carolina seeks by urging this Court to grant leave to intervene.

Wherefore, South Carolina prays that it be permitted to intervene as a party plaintiff in this case, and to adopt, as its own and as if fully set forth, Texas' amended complaint in intervention, and the factual and legal arguments set forth therein, to the extent the same are relevant and applicable to the claims of South Carolina, or alternatively prays that it be permitted to file its own complaint in intervention setting forth the factual and legal arguments asserted by Texas in its amended complaint and seeking, on behalf of South Carolina, relief of the same nature as Texas.

Respectfully submitted,

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Counsel of Record

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BRIEF OF THE STATE OF SOUTH CAROLINA IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AND ADOPT COMPLAINT

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STATE OF NEW YORK,

Defendant.

BRIEF OF THE STATE OF SOUTH CAROLINA IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AND ADOPT COMPLAINT

On May 31, 1988, the Court granted the motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original

jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property held or formerly held by securities brokerage houses incorporated in Delaware and demanded by or remitted to New York. On February 21, 1989, the Court granted the motion of Plaintiff in Intervention State of Texas ("Texas") to intervene and file its complaint in intervention in this case. Subsequently, the Court further granted the motion of Texas to file an amended complaint. Texas claims a portion of the unclaimed property at issue as well as additional unclaimed property that is of the same nature and arises in the same way as the property

already at issue. The State of South Carolina ("South Carolina") also claims a portion of the original property and the additional property at issue in this case. South Carolina seeks leave to intervene as a plaintiff in this suit and to adopt the amended complaint previously filed by Texas.

JURISDICTION

The Court has accepted original jurisdiction of this action pursuant to Article III, Section 2 of the Constitution of the United States and under United States Code Title 28, Section 1251(a).

STATEMENT OF THE CASE

The State of South Carolina seeks leave to intervene in this action, adopting the amended complaint filed by the State of Texas, Plaintiff in

Intervention, as its own. That complaint and the motion for leave to intervene filed by South Carolina set forth the character of the property at issue and the entitlement of South Carolina, Texas, and the remaining states to claim a portion of that property. Generally, the property consists of excess receipts and additional excess receipts, as described by Texas in its complaint in intervention. These receipts result from the system of securities trading, involving brokerage firms incorporated in Delaware and other states and trading in New York and the Depository Trust Company, a New York corporation. The owner of the property at issue is unknown, and the property itself has become abandoned. Under current

practice, the property is held for three years and then remitted to the State of New York.

The parties to this action all claim the property, or a portion thereof, pursuant to the rules of priority established by this Court in Texas v. New Jersey, 379 U.S. 674 (1965), and Pennsylvania v. New York, 407 U.S. 206 (1972). The parties differ, however, in their characterization of the unclaimed property and to whom it is owed. As a result, each party has a different theory of who is the "owner" and who is the "holder" of the property. Delaware's position is that the unclaimed property results from a debt owed by brokers incorporated in Delaware to beneficial owners whose addresses are

unknown. Under this theory, all the property escheats to Delaware as the state of incorporation of the "holders." New York claims that the property results from a debt owed by brokers to other brokers and banks which, for the most part, have trading addresses in New York. Under this theory, all the property escheats to New York as the state of last known address of the "holders." Texas takes the position that the unclaimed property is a result of a debt owed by the issuer of the security to the beneficial owner. If the address of the beneficial owner is unknown, the property goes to the "issuer's" state of incorporation. Under this theory, all 50 states share in the distribution of the property. South Carolina supports the Texas theory

and seeks leave to intervene and to adopt the Texas amended complaint as its own.

SUMMARY OF ARGUMENT

I. South Carolina claims the right to custodial possession of portions of the property that is the subject of this suit and satisfies the requirements of Rule 24(a)(2) of the Federal Rules of Civil Procedure and the standards set out in Texas v. New Jersey. South Carolina is entitled to intervene as a matter of right.

II. South Carolina claims an interest in the property that is the subject of this suit, and the intervention of South Carolina will not unduly delay this action or prejudice the rights of the original parties. Having satisfied the requirements for

permissive intervention pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, South Carolina's motion for leave to intervene should be granted.

ARGUMENT

I. SOUTH CAROLINA IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO RULE 24(a)(2), FEDERAL RULES OF CIVIL PROCEDURE AND THE STANDARDS ESTABLISHED IN TEXAS V. NEW JERSEY, 379 U.S. 674 (1965).

Rule 9.2 of the Rules of the Supreme Court provides that "[t]he form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those Rules, where their application is appropriate, may be taken as a guide to procedure in original actions in this Court." Rule 24 of the Federal Rules of

Civil Procedure governs intervention generally. That rule provides that anyone who applies timely shall be permitted to intervene in an action:

> [W]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed.R.Civ.P.24(a)(2).

South Carolina seeks leave of Court to intervene in this case because it claims an interest in the property that is the subject of this action. South Carolina claims all excess receipts that were issued by

corporations domiciled in South Carolina. Likewise, South Carolina claims all additional excess receipts that were issued by South Carolina domiciliaries and governmental entities. Although the amount of property subject to claim by South Carolina is difficult to estimate, it is substantial and sufficient to entitle South Carolina to intervene as a matter of right.

In the case of Texas v. New Jersey, this Court set a standard allowing any state that claimed an interest in the subject property to intervene in original actions involving unclaimed property. Because it claims a significant interest in the excess receipts and additional excess receipts at issue in this case, South Carolina

has satisfied the test of Texas v. New Jersey and should be allowed to intervene.

The Court's decision in this case will determine South Carolina's rights to the property at issue in this case. It is, therefore, important that South Carolina be allowed to intervene and to participate in the discovery process to identify the specific property to which it is entitled. Although South Carolina seeks to adopt the Texas' amended complaint, it is also important that South Carolina be allowed to advocate its own claim before the Court.

The standards for intervention as a matter of right have been satisfied, and South Carolina should be granted leave to intervene.

II. IN THE ALTERNATIVE, PERMISSIVE INTERVENTION IS APPROPRIATE PURSUANT TO RULE 24(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Rule 24(b) of the Federal Rules of Civil Procedure gives the Court discretion to allow permissive intervention where appropriate. As a sovereign state with a substantial interest in the outcome of this litigation, South Carolina should be allowed to intervene. South Carolina does not seek to interject a new theory of the case, but, rather, to join in the Texas amended complaint and to coordinate its efforts with Texas toward the ultimate resolution of this litigation. It is apparent, therefore, that intervention by South Carolina will not unduly delay this action or

prejudice the rights of the original parties. South Carolina has satisfied the standards for permissive intervention, and the Court should exercise its discretion to allow South Carolina to intervene.

CONCLUSION

For all these reasons, the motion of the State of South Carolina for leave to intervene as a plaintiff in this action and to adopt the amended complaint filed by the State of Texas should be granted. In the alternative, South Carolina should be granted leave to intervene and permitted to file its own complaint in intervention.

Respectfully submitted,

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PROOF OF SERVICE

I, Ray N. Stevens, Deputy Attorney General for the State of South Carolina, certify that I am a member of the bar of the Supreme Court of the United States, and that on the _____ day of _____, 1990, I served copies of the State of South Carolina's motion for leave to intervene and adopt complaint and brief in support of motion for leave to intervene and adopt complaint on all parties required to be served by depositing such copies, first class postage prepaid, in the United States mail, addressed as follows:

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